

CHIPPENHAM MANOR NURSING HOME

This Settlement Agreement is entered into this 8th day of January, 2002 by and between the United States of America, including the United States Attorney for the Eastern District of Virginia, the Department of Health and Human Services, Health Care Financing Administration ("HCFA"), now known as the Centers for Medicare & Medicaid Services ("CMS") and the Department of Health and Human Services, Office of Inspector General (collectively "United States"); the Medicaid Fraud Control Unit (MFCU) of the Office of the Attorney General and the Department of Medical Assistance Services (DMAS) on behalf of the Commonwealth of Virginia (collectively the Commonwealth of Virginia); and Chippenham Associates L.P. d/b/a Chippenham Manor Nursing Home ("Chippenham"), and Richmond Management Associates, L.L.C., Chippenham's current management company ("Richmond"), to resolve the pending and potential civil and administrative claims more fully described herein. The above sovereigns and entities are referred to herein as "the Parties."

PREAMBLE

A. WHEREAS, Chippenham, located at 7246 Forest Hill Avenue, Richmond, Virginia 23225, is a long-term care/skilled nursing facility engaged in the provision of health care services to Medicare and Medicaid beneficiaries currently managed by Richmond Management Associates, LLC, a limited liability company headquartered in Brentwood, Tennessee;

B. WHEREAS the United States Attorney's Office for the Eastern District of Virginia, the Commonwealth of Virginia, and the Department of Health and Human Services, (collectively referred to as "the Governments") conducted an investigation arising under the federal civil False Claims Act; 31 U.S.C. §§ 3729-3733 and Virginia's civil Medicaid Fraud statutes pursuant to

Virginia Code Annotated § 32.1 -312 and § 32.1 -313. As a result, the Governments contend that during a period from 1995 to the present, Chippenham provided substandard care to residents by failing to provide adequate wound care, adequate nutrition, and adequate nursing services in a timely manner in view of the current clinical condition of these residents, failed to notify family and physicians of changes in the residents' conditions promptly, failed to obtain orders for and/or administer medications timely and accurately, and by all of or a combination of these actions or omissions, subjected residents to conditions posing significant or potential risks to their health and well being;

C. WHEREAS, the Governments allege that the above conduct resulted in damages to the Medicare and Medicaid health care programs, in that the Governments contend that the care provided was not in compliance with all existing regulations and standards

D. WHEREAS, Civil Monetary Penalties were imposed against Chippenham by HCFA/CMS during this time period pursuant to 42 U.S.C. §§ 1395 i-3(g) and (h), 1396r(g) and (h); 42 C.F.R. § 488.400 et. seq.

E. WHEREAS, Chippenham and Richmond deny that the care provided was inadequate, and further deny any wrongdoing, inadequacy or liability in regard to the care rendered to any resident of Chippenham and have appealed Civil Monetary Penalties assessed by HCFA/CMS;

F. WHEREAS, the Parties wish to resolve this matter in an amicable manner without the need for protracted litigation;

G. WHEREAS, the Parties agree that this Settlement Agreement does not constitute and shall not be construed as an admission of any liability, inadequacy or wrongdoing on the part of Chippenham, Richmond, or its parents, subsidiaries, and currently employed officers, agents, and employees of any of the foregoing, and may not be used as evidence of such in any proceeding by either the Governments or any third party;

H. NOW THEREFORE, for and in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the Parties, intending to be legally bound, enter into the following Settlement Agreement:

PAYMENTS DUE TO THE UNITED STATES

1. Chippenham agrees to pay the sum of two hundred and seventy-five thousand dollars (\$275,000) to the United States in settlement of investigations arising from the federal civil False Claims Act 31 U.S.C. §§ 3729-3733, Virginia's civil Medicaid Fraud statutes §§ 32.1 -312 and 313 of the Code of Virginia, as well as the HCFA/CMS civil money penalties for all conduct described in paragraphs B through D. The \$275,000 shall be paid by applying the Medicare funds remaining from Medicare's 1997 Cost Report Notice of Program Reimbursement (NPR) dated October 3, 2001 concerning underpayments for therapy services to the debt. Payment of Chippenham's portion of the settlement amount shall be transferred from the Medicare Fiscal Intermediary to the Financial Litigation Unit, 65000 World Trade Center, 101 West Main Street, Norfolk, Virginia 23510, Attn: Shirley Parks, within five business days of the entry of a final order of approval of this agreement by the Bankruptcy Court. Said date is referred to herein as the "Implementation Date."

2. Richmond agrees to pay to the Governments the sum of twenty five thousand dollars (\$25,000) in settlement of any potential civil or administrative liability to the United States as described in paragraphs B through D. The Parties acknowledge that Richmond is owed management fees. In addition to payment of the sum of \$25,000 to the Governments, Richmond agrees to forego collection of \$75,000 in management fees owed to it by Chippenham, with the express intent that Chippenham shall, by virtue of this debt forgiveness, have additional funds available to dedicate to providing quality care to the residents at Chippenham. A check in said amount of \$25,000 shall be tendered to the Financial Litigation Unit, 65000 World Trade Center,

101 West Main Street, Norfolk, Virginia 23510, Attn: Shirley Parks within 5 business days of the Implementation Date.

3. Chippenham agrees to establish an escrow account for the maintenance of a separate cash reserve of \$300,000 (hereinafter, the "Escrow Fund"), the proceeds of which shall be used expressly for Chippenham's payment of expenses associated with the federal monitor, quality of care improvements, approved capital expenditures, and other compliance requirements set forth in this settlement agreement. Funding for the Escrow Fund will not come from Chippenham, but will come from outside sources. To the extent any monies in the Escrow Fund are not used or cannot be used by Chippenham, all monies will revert to the Department of Justice as civil restitution in this case. The United States Attorney's Office (EDVA) shall have sole authority for oversight of the Escrow Fund and any agreement(s) pertaining thereto.

STAFFING, TRAINING, and other REMEDIAL MEASURES

4. Chippenham and Richmond shall at all times ensure that the facility is staffed with a sufficient number of qualified staff to fully meet the needs of residents as set forth in their comprehensive care plans. Chippenham and Richmond shall ensure that all decisions regarding the number of necessary staff are based on the identified needs of residents. Chippenham shall budget and staff with total nursing services at a minimum of 3.45 labor hours per patient day ("LHPPD"). Total nursing services shall include registered nurses, licensed practical nurses, certified nursing assistants, care plan or "MDS" nurses, central supply nurse, nursing administration, and unit managers, and shall be comprised of at least 2.0 LHPPD in certified nursing assistant hours. The Parties recognize that the nursing needs of residents may change based upon such factors as the acuity of the medical conditions of residents, their specialized needs, and the number of residents residing in the facility. When, in the professional judgment of Chippenham's Administrator and Director of Nursing, or in response to suggestions by the Monitor, it is apparent that staff should be adjusted between care-giving disciplines or increased to meet then-current needs, Chippenham and Richmond agree to adjust or increase such staffing.
5. All staff shall be deployed throughout the facility in a manner designed to ensure that the individual needs of residents are met.
6. Chippenham and Richmond shall use temporary staff only as necessary to meet the needs of residents and fulfill Chippenham's obligations to ensure there is adequate staffing to meet resident needs. Chippenham and Richmond shall strive to minimize the number of individuals working at the facility who are on temporary assignment or not employed by Chippenham, and shall continue to implement measures toward that end. Chippenham shall ensure that no individual with a felony criminal record, or other criminal matter that would bar him or her from

being employed as a hands-on caregiver in the Commonwealth of Virginia, or any person and/or business entity who has been excluded from or deemed ineligible to participate in federal health care programs is hired to work or contracted with for services at the facility in any capacity.

Chippenham and Richmond agree that the website of the United States Department of Health and Human Services shall be the standard by which they determine ineligible individuals and business entities.

7. Chippenham and Richmond stipulate that the following damages may be imposed at the discretion of the Governments for non-compliance with the staffing requirements of this Settlement Agreement:

a. The Governments may impose a maximum penalty of \$10,000 for any pay period in which the minimum average LHPPD actually worked falls below 3.2 LHPPD.

b. The Governments may also impose a maximum penalty of \$ 25,000 for the second consecutive pay period in which the minimum average LHPPD actually worked falls below 3.2 LHPPD .

c. Chippenham agrees to self-monitor compliance with this paragraph by utilizing its CEN/PAY – Labor Hours Per Pay Period Reports to measure compliance and will report any failure to meet minimum staffing levels to the Monitor, who will investigate the matter and provide a report to the Parties. CEN/PAY reports are produced from data generated by Chippenham's electronic time card system, and thus accurately measure actual nursing hours expended per patient day. Chippenham shall make said reports available to the Governments, the Monitor, and Clifton Gunderson or other audit designee upon request.

8. In addition to the payments described in paragraphs 1 and 2 above, and to supplement the Chippenham staff and to facilitate the provision of care as required by federal and state regulatory standards, Chippenham and Richmond agree to provide supplemental qualified

personnel resources having a fair market value of no less than \$ 50,000 during the first year following the implementation of this Settlement Agreement. Amounts expended on temporary agency nurses in order to meet the minimum staffing requirements required by Paragraph 7 shall not qualify toward satisfaction of Chippenham's and Richmond's obligations under this paragraph. It is the intent of the Parties that these supplemental funds are utilized to:

- a. Supplement currently budgeted staff by providing additional, needed expertise and services to ensure appropriate implementation of successful policies and procedures and to maintain quality resident care at the facility and/or
- b. Supplement currently budgeted nursing assistant staff by providing additional resources or systems to reduce or alleviate temporary staffing shortages and reliance on agency personnel, such as developing an in house staffing pool.

Chippenham and Richmond may fulfill their obligations under this paragraph by designating personnel who are employed by or have been hired as consultants by affiliated corporations only with the prior approval of the Governments. In such case, the amounts qualifying toward satisfaction of Chippenham's obligations under this paragraph shall be limited to personnel costs associated with the time the approved consultants are on the premises of Chippenham. The Governments have approved expenditures for Bonnie-Lou Binnig, currently serving as Director of Compliance and Quality Improvement, and Donald F. McHale, currently serving as Quality Advisor, as consultants who may provide needed expertise to Chippenham, providing that Bonnie-Lou Binnig spends no fewer than two days per month at Chippenham, and Donald McHale spends no fewer than five days per month at Chippenham in order for their time to qualify toward Chippenham's supplemental funds obligation as set forth in this paragraph.

Chippenham and Richmond agree to provide the Governments and the Monitor with monthly status reports of amounts expended by the facility pursuant to this paragraph, with the

first such status report being due 15 days following the close of the first full month following the Implementation Date, and shall continue thereafter until the sum of \$50,000 has been fully accounted for. Chippenham's Administrator and the CEO of Richmond shall certify the status reports. Chippenham and Richmond shall provide such supporting documentation as is requested by the Governments or the Monitor upon request. Furthermore, the Governments and the Monitor may make recommendations for expenditures under this paragraph that shall be considered in good faith by Chippenham and Richmond.

9. Chippenham will provide each resident with adequate skin care, nutrition, turning and positioning and other services to decrease the likelihood of skin breakdown and the development of pressure sores. Chippenham, its agents, employees, contractors, and/or subcontractors agree to abide by the provisions of the Clinical Practice Guidelines for the Prediction, Prevention and Treatment of Pressure Ulcers ("Guidelines") promulgated by the Agency for Health Care Policy Research, now known as the Agency for Healthcare Research and Quality ("AHCPR"); specifically, *Pressure Ulcers in Adults: Prediction and Prevention, Clinical Practice Guideline Number 3, 92-0047* (May 1992) and *Treatment of Pressure Ulcers, Clinical Practice Guideline Number 15, 95-0652* (December 1995) available at www.ahcpr.gov. Chippenham will use the Guidelines as a basis to establish Chippenham's individualized care plans for skin and wound care for residents. Chippenham shall implement protocols and procedures for skin and wound care that reflect the standards set forth in the AHCPR Guidelines.

10. Chippenham agrees to implement and/or maintain a nutritional monitoring program for residents that, at a minimum, includes implementation of and compliance with the Standards of Practice and Practice Guidelines for "Medical Nutrition Therapy for Pressure Ulcers/Wounds, "Weights-Monitoring of," and "Weight Committee", which are attached hereto as Exhibit A.

11. Chippenham will provide enteral and parenteral feedings for only those residents who are

unable to obtain adequate nutritional intake orally and whose clinical condition demonstrates that enteral/parenteral feedings are unavoidable, while at the same time honoring physician orders and the residents' Advance Directive choices, if available. Clinical decisions shall be based on an individualized evaluation of the resident's nutritional needs.

12. Chippenham will provide residents with appropriate incontinence care in accordance with all applicable statutes and regulations in a timely fashion and further agree that they will ensure that reasonable personal hygiene measures are afforded to all residents in accordance with all applicable statutes and regulations in a timely fashion.

13. Chippenham agrees that effective pain management will be timely offered and administered to all residents in need of medication or other treatment for pain in accordance with all applicable statutes and regulations.

14. Chippenham shall ensure that all medication is timely distributed by nursing staff consistent with contemporaneous professional standards and in accordance with all applicable statutes and regulations.

15. Within forty-five (45) days of the Implementation Date, Chippenham will provide professionally based mandatory in-service training in all areas described in paragraphs 9 to 14 above. All dietary, clinical management, and nursing staff at Chippenham shall attend the in-service training as is appropriate for their discipline and level of job responsibilities. Thereafter, this training and such other appropriate professional development and compliance training for the skill areas designated in paragraphs 9 through 14 shall be provided in accordance with the Compliance Plan and the specific training schedule set forth for the 180 days following the Implementation Date. All new dietary, clinical management, and nursing staff at Chippenham shall be trained in the areas described in paragraphs 9 through 14, as appropriate for his or her discipline, within twenty (20) calendar days of the employee's commencing employment with

Chippenham. Chippenham will at all times maintain a comprehensive long term training program for all dietary, clinical management, and nursing staff at Chippenham to ensure that each is knowledgeable and competent to perform all assigned duties.

16. Chippenham and Richmond agree that Chippenham will comply fully with the applicable laws, rules and regulations governing the Medicare and Medicaid programs, including the Nursing Home Reform Act of 1987, as amended and codified at 42 U.S.C. §§ 1395, et. seq., 1396 et. seq.; 42 C.F.R. Parts 483, 488. Chippenham and Richmond agree to adopt a Corporate Compliance Plan within ninety (90) days from the date of execution of this Agreement that incorporates the policies and principles set forth in HHS-OIG 's Compliance Program Guidance for Nursing Facilities, 65 Federal Register 14289 (March 16, 2000). Such Corporate Compliance Plan shall contain a comprehensive set of specific policies and procedures to ensure compliance by Chippenham and Richmond at the Chippenham Manor Nursing Home, including such issues as a Code of Conduct; Financial, Employee, and Service Oversight; and Quality of Care. The Corporate Compliance Plan shall be submitted for review and approval by the United States Attorney's Office for the Eastern District of Virginia (EDVA) within 90 days after the Implementation Date. The EDVA shall provide all comments to Chippenham and Richmond regarding their proposed Corporate Compliance Plan within 30 days of receipt. Chippenham and Richmond agree to consider and incorporate the substance of these comments in their plan as appropriate. Chippenham and Richmond agree to promptly meet and discuss any comment not incorporated into the plan with the Parties. In the event, the Parties fail to reach a final agreement as the adequacy of Chippenham and Richmond's Corporate Compliance Plan, the Parties agree to submit the issues in dispute to, and to abide by the decision of, the United States District Court for the Eastern District of Virginia.

RECORDS

17. Chippenham will enforce its existing policies requiring that all standards relating to the proper means of entering and where necessary, changing, information in a medical record be strictly adhered to. Chippenham shall train its staff that falsification or improper alteration of any resident record and other document related to resident care is forbidden. Chippenham shall obtain from each employee a signed statement indicating that the employee understands the policy forbidding any falsification or improper alteration and the appropriate manner in which to make entries into medical records and, should a change be necessary, the acceptable means of documenting the changes and the reasons therefore. Chippenham further agrees that it will terminate the employment of any person found to have willfully or through deliberate ignorance or reckless disregard caused a falsification or improper alteration of any record maintained at Chippenham. Chippenham and Richmond further agree that during the monitoring period the Governments may assess penalties not to exceed \$ 50,000 for each willful and material falsification or improper alteration of any record (or any such alterations done through deliberate ignorance or reckless disregard related) to resident care upon a finding by any Court of competent jurisdiction that: 1) the record related to resident care was willfully or through deliberate ignorance or reckless disregard falsified by anyone at the direction of Chippenham's managerial staff, or 2) was willfully or through deliberate ignorance or reckless disregard falsified by an employee of Chippenham who was not disciplined in accordance with the standards set forth in this paragraph. Clinical disagreement does not constitute falsification for purposes of this section.

MONITOR

18. Chippenham and Richmond agree to engage an independent third party monitor who shall be a Registered Nurse (the "Monitor") with substantial experience in the care of elderly persons residing in a nursing home setting to assist and monitor Chippenham's compliance with the

terms of this Settlement Agreement and the provision of quality care. The United States, Chippenham, and Richmond shall mutually agree upon the Monitor. If the Parties are unable to agree on the appointment of a Monitor, the United States may nominate the Monitor and petition the Bankruptcy Court or any other court of competent jurisdiction for the appointment of its nominee.

19. If the Monitor resigns or is removed for any reason by mutual agreement of the Parties prior to the completion of his/her term of appointment, the United States, Chippenham, and Richmond shall mutually agree upon the appointment of a successor Monitor. If the Parties are unable to agree on the appointment of a successor Monitor, the United States may nominate the Monitor and petition the Bankruptcy Court or another court of competent jurisdiction for the appointment of its nominee.

20. The Monitor shall visit Chippenham for a period of two (2) years from the effective date of this Settlement Agreement and shall have access to all current nursing home residents, their medical records, records in the possession or control of Chippenham and Richmond (e.g. staffing records and quality assurance reviews) and Chippenham and Richmond staff and employees, for purposes of ensuring coordination of responses to identified problems and enabling the Monitor to fulfill his/her duties. Chippenham and Richmond shall ensure the Monitor's immediate access to facilities, individuals, and documents, and assist in obtaining the full cooperation of its current employees, contractors, and agents.

21. The Monitor shall evaluate compliance by Chippenham and Richmond with the requirements of this Settlement Agreement and shall advise management and staff as to recommended steps and procedures that, in the Monitor's view, may be implemented to facilitate compliance with this Settlement Agreement. The Monitor shall inspect and evaluate the CEN/PAY staffing reports showing LHPPD and may make recommendations as to increased

staffing levels or staffing adjustments.

22. The Monitor shall provide an exit interview to appropriate officials of Chippenham and Richmond following the conclusion of each visit to the facility and may make recommendations both informally and in writing. At the request of Chippenham and Richmond, the Monitor may provide or arrange for direct technical assistance to facilitate compliance with this Settlement Agreement. The cost of mutually agreed upon outside technical assistance shall be paid by Chippenham and Richmond. Technical assistance provided for by the Monitor will be compensated within the terms of this agreement. The Monitor shall have no financial interest in any source of outside technical assistance recommended to the facility.

23. It is the express intent of the Parties that the Monitor work in a cooperative and amicable manner with Chippenham and Richmond, provide technical assistance, as requested, and otherwise facilitate compliance with this Settlement Agreement by Chippenham and Richmond. Chippenham and Richmond shall cooperate with the Monitor appointed to assist in the implementation of this Agreement.

24. The Monitor shall have no authority to direct the care of any individual resident but may notify the Medical Director and/or the Director of Nursing of a recommendation that any resident be seen by a physician within a reasonable period of time in light of the resident's condition. Chippenham agrees that it will contact the resident's attending physician when requested by the Monitor, and will follow the directions of the physician, if any. If, in the professional judgment of the Monitor, an emergency exists with respect to any resident or other condition, the Monitor shall immediately notify the Administrator or appropriate supervisor on duty at Chippenham so that immediate remedial action can be taken. Chippenham shall record such requests on the document used as the "24 Hour Report" and respond according to the facility's protocols. Nothing in this paragraph shall be construed as preventing the Monitor from notifying the Parties

immediately. The Parties agree to confer and address the issues raised by the Monitor as soon thereafter as is practicable.

25. The Monitor may confer and correspond with the Parties on an ex parte basis, and both the Parties and the Monitor shall participate in regularly scheduled conferences (which may be attended by phone) to discuss the Monitor's reports. Within ten (10) days from the Implementation Date, or the Monitor's appointment, whichever occurs last, the Monitor shall submit a budget to the Governments, Chippenham, and Richmond for the two (2) year monitoring period. During the two (2) year period, the Monitor shall visit Chippenham at least monthly for no fewer than two days unless unforeseen or emergency circumstances occur or unless otherwise agreed to by the Parties to this Settlement Agreement.

26. Within fourteen calendar days following the conclusion of each visit, the Monitor shall write a brief and concise written report documenting any recommendations relating to compliance or any other matter addressed in this Settlement Agreement. The report shall document any recommendations relating to compliance and include all remedial actions, ongoing quality initiatives or other actions taken by Chippenham in response to the identified issues. The Monitor shall deliver the report to the Parties to this Settlement Agreement by delivering a copy to the following named persons (or his or her designee) via electronic mail or facsimile, and USPS regular mail, or such other method of delivery agreed upon by the Parties.

- Constance H. Frogale, Assistant United States Attorney, United States Attorney's Office
Eastern District of Virginia 2100 Jamieson Avenue, Alexandria, VA 22314
Fax: (703)299-3983
- James R. Wooddell, Administrator, Chippenham Manor Nursing Center, 7246 Forest Hill
Avenue, Richmond, VA 23225 Fax: (804)272-7129
- William D. Orand, Richmond Management Associates, Six Cadillac Drive, Suite 310,
Brentwood, TN 37027 Fax: (615)250-7102

— Marie C. Infante, Esquire, Mintz Levin Cohn Ferris Glovsky & Popeo P.C.,
701 Pennsylvania Avenue, N.W., Suite 900, Washington, D. C. 20004
— Fax: (202)434-7400

Upon receipt of the report, Chippenham and Richmond shall have the opportunity to submit a response regarding any concerns raised by the Monitor and provide evidence to rebut the Monitor's conclusions and explain subsequent actions taken by Chippenham in response to these concerns. Chippenham's response, if any, shall be submitted within ten (10) business days of receipt by Chippenham and Richmond of the Monitor's report, via electronic mail or facsimile and USPS regular mail, as directed by the Governments. Chippenham, Richmond, and the United States agree that, at the request of Chippenham, Richmond or the Governments, the Parties shall meet in person or via teleconference promptly to discuss any issues or concerns raised by the Monitor or to otherwise facilitate compliance. Chippenham is not bound by the Monitor's recommendations or conclusions but agrees to consider and address them in good faith. In the event the United States believes there has been a breach of this Settlement Agreement, nothing in this Agreement shall prevent the United States from calling the Monitor as a witness in any proceeding brought to enforce this settlement agreement.

27. The Monitor's compensation and reasonable expenses shall be set forth in the budget referred to in paragraph 25 above. Chippenham and Richmond shall bear all reasonable costs and expenses of the Monitor consistent with the hourly rates established. The Parties agree that the total budget for the monitoring program for two years shall not exceed the amount of \$125,000 unless unforeseen circumstances arise.

28. The Monitor shall submit itemized monthly invoices to the Administrator of Chippenham that satisfactorily account for time and reasonable travel and lodging expenses incurred in carrying out the duties of Monitor in accordance with the budget. The Monitor shall certify that the invoices are accurate. Failure to pay the Monitor within thirty (30) calendar days of review

and approval of his/her invoice shall constitute breach of this Agreement. At all times the Monitor shall coordinate his or her activities, including interviews and meetings, with the Administrator or the Director of Nursing and/or Richmond personnel to maximize participation and to minimize disruption in the day-to-day operations of the facility. The Monitor may visit the facility at any time without notice. All information, including identifiable personal health care and other information of all residents and other information regarding residents and staff, and all documents pertaining thereto, are strictly confidential and shall not be disclosed by the Monitor to anyone other than the Parties except as necessary to enforce this Agreement, or as otherwise required by law, regulation, or official process. In the event that the Monitor identifies a situation that the United States believes immediately jeopardizes the health and safety of residents of Chippenham, the United States shall notify the Parties, and may take whatever action authorized by law it deems necessary to ensure the health and safety of the residents.

29. No later than the second anniversary of the appointment of the Monitor, the Monitor shall prepare comprehensive Final Report evaluating the status of compliance by Chippenham and Richmond with each and every provision of this Settlement Agreement, as well as Chippenham's and Richmond's responses to each area of concern, and deliver such Final Report to the Parties pursuant to the provisions of paragraph 26. Chippenham and Richmond shall have 30 days in which to deliver their comments, any evidentiary rebuttal, and response to the Final Report. If, after review of the Final Report and any comments provided by Chippenham and Richmond, the United States determines that Chippenham and Richmond have achieved compliance with this Settlement Agreement, monitoring activities shall terminate. If the United States believes that compliance has not been achieved, the United States shall promptly notify Chippenham and Richmond and monitoring activities shall continue. In any court proceeding Chippenham and Richmond may file seeking the termination of the Monitor, Chippenham and Richmond shall

bear the burden of establishing that they have fully and faithfully implemented each and every provision of this Settlement Agreement. The Parties agree that the United States District Court for the Eastern District of Virginia is the appropriate forum for any such action.

AUDITS, COMPLIANCE, REPORTS, and ENFORCEMENT

30. Chippenham and Richmond agree that the Governments may perform a quarterly audit of its checks and check register and any other financial record maintained with respect to the financial condition of Chippenham. Such quarterly audits shall be performed by Clifton Gunderson, LLC or other qualified designee chosen and retained by the United States Attorney's Office, who, after a reasonable time following completion of the audit, shall serve on each of the Parties to this Agreement a brief and concise report with respect to his/her findings and any recommendations.

31. Chippenham and Richmond agree to develop in writing within 120 days of the date of this Settlement Agreement a plan for the regular evaluation of compliance with this Settlement Agreement by Chippenham. The Parties agree that Chippenham Administrator James Wooddell (or the current facility administrator) shall serve as internal compliance officer, and further agree that Ms. Bonnie Lou Binnig shall serve as liaison between Chippenham and Richmond and the Governments for purposes of this evaluation.

32. If Chippenham and/or Richmond fails to comply with any of the terms of this Settlement Agreement, or if any of Chippenham's and/or Richmond's representations or warranties be willfully and materially false, the United States may, at its sole discretion, exercise one or more of the following rights:

- a. Seek specific performance of this Settlement Agreement, in which case the prevailing party shall be entitled to an award of reasonable attorneys fees and costs; or
- b. Exercise any other right granted by law, including civil contempt.

33. If the United States exercises any of its rights under paragraphs 29 or 32 of this Settlement Agreement, Chippenham and/or Richmond specifically reserves all of its rights to challenge, defend and contest any such action.

34. Chippenham and Richmond and their agents, employees, contractors and/or subcontractors agree that they will not intimidate or retaliate against any individual or individuals who cooperated with this investigation, or cooperates with any future effort to enforce the provisions of this Settlement Agreement or express other concerns to the government either voluntarily or in response to any future inquiries by state or federal officials. However, this provision may not be used as a shield by any employee that is disciplined or fired pursuant to the Chippenham's obligations under this settlement agreement, the terms of its Compliance Plan, or for failing to adequately perform his or her duties. Chippenham will timely advise the Monitor of any disciplinary actions resulting in suspension or termination, and the reasons therefore, that occur during the monitoring period. Nothing in this paragraph shall limit in any way a person(s) right to sue as a relator under the Federal False Claims Act, 31 U.S.C. §§ 3729-3733.

35. Except as specifically provided otherwise in this Settlement Agreement with respect to the Monitor, the obligations imposed by this Settlement Agreement on Chippenham shall be in effect for a period of three (3) years from the effective date of this Settlement Agreement. During that three-year period, thirty (30) days after the first, second and third anniversary date of this Settlement Agreement, Chippenham will submit Annual Reports to the United States Attorney, Eastern District of Virginia regarding the status of its compliance with this Agreement. Each annual report shall include a description of the specific steps that Chippenham and/or Richmond have taken to implement this Agreement; barriers or impediments encountered that have precluded full and timely implementation of the Agreement, and the specific steps and/or procedures that have been adopted to overcome such barriers and ensure full implementation of

the Agreement; a description of the training programs implemented pursuant to this Agreement and a summary of the activities undertaken in furtherance of these programs; and certification by an appropriate official of Chippenham and/or Richmond that all covered persons have completed the required training; and that all the information provided is correct.

RELEASES

36. In consideration of the promises made by Chippenham and Richmond in this Settlement Agreement and conditioned upon payment in full of the settlement amounts referenced in the Preamble, paragraphs B through D and 1 and 2, the United States and the Commonwealth of Virginia, on behalf of the sovereigns, its officers, agents, agencies, and departments, hereby release and discharge Chippenham and Richmond from any and all civil or administrative monetary claims, actions, causes of action, liabilities, losses, and damages, including attorneys' fees, costs and expenses, which the United States may have against Chippenham and Richmond, its parents, affiliates, officers and directors and employees under the False Claims Act, 31 U.S.C. §§ 3729-3733, the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, Virginia's civil Medicaid Fraud statutes §§ 32.1-312 and 313 of the Code of Virginia, and common law theories of payment by mistake, unjust enrichment, breach of contract and fraud for: (a) any deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Chippenham from January 1, 1995 to the effective date of this Settlement Agreement and (b) the adequacy of care (as described in paragraph B. above) provided during the period January 1, 1995 to present to the nursing home residents identified in the HHS-OIG subpoena dated July 11, 2001. No release is set forth herein or implied as to the ServiceMaster Company, the former ServiceMaster Diversified Health Services, BEP Services LP, Forest Hill Investors, LLC, and Forest Hill Holdings, LLC.

37. The Parties agree that the releases given in the preceding paragraph specifically exclude the following:

a. Any civil or administrative disputes, adjustments, CMS enforcement actions or claims relating to matters other than those for (1) any deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Chippenham from January 1, 1995 to the effective date of this Settlement Agreement and (2) the adequacy of care provided during the period January 1, 1995 to the present, to the nursing home residents who were the subject of the OIG subpoena dated July 11, 2001.

b. Any civil, criminal or administrative disputes or claims arising under the Internal Revenue Code, Title 26 of the United States Code.

c. Any disputes or claims arising under any express or implied warranties relating to products or services.

d. Any disputes or claims arising under the criminal laws of the United States or the Commonwealth of Virginia.

e. Except as explicitly stated otherwise in this settlement agreement, any administrative liability, including mandatory or permissive exclusion from federal health care programs.

f. Subject to the enforcement provisions of paragraphs 7 and 17, any obligations created by this Settlement Agreement.

g. Any civil money penalty or termination action by CMS, if any such action is based on matters other than deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Chippenham from January 1, 1995 to the effective date of this Settlement Agreement and the adequacy of care (as described in paragraph B. above) provided during the period January 1, 1995 to present.

38. Chippenham and Richmond agree that all costs (as defined in the Federal Acquisition

Regulation ("FAR") § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. § 1395-1395 g, and §§ 1396-1396v, (and the regulations promulgated there under) incurred by or on behalf of Chippenham and Richmond in connection with: (a) the government's investigations, and Chippenham's and Richmond's investigation and defense of the matter covered by this Settlement Agreement, (b) the negotiation of this Settlement Agreement, and (c) the payments made to the United States pursuant to paragraphs 1 and 2 of this Settlement Agreement, and (d) any corrective actions taken pursuant to this Agreement that are not related to providing resident care, (including but not limited to the costs associated with hiring the Monitor, developing the liaison, and filing required reports and certifications) shall be unallowable costs for government contract accounting and for Medicare, Medicaid, VA and FEHBP reimbursement purposes. Unallowable costs shall not include: the cost of additional in service professional and compliance training for the staff, the costs related to additional personnel hired or retained for the purpose of improving resident care, including personnel and assistance reported in connection with the expenditure of supplemental funds required by paragraph 8 and capital improvements and other expenditures related to this agreement. Unallowable costs shall be separately estimated and accounted for by Chippenham and/or Richmond, and Chippenham and/or Richmond will not charge such costs directly or indirectly to any contracts with the United States or any State Medicaid program, or to any cost report, cost statement, or information statement submitted by Chippenham, to TRICARE, VA or FEHBP programs. Nothing in this Settlement Agreement shall constitute a waiver of the rights of Chippenham and Richmond, or any Medicare fiscal intermediary or contractor, or any Medicaid fiscal agent, to examine or re-examine the unallowable costs described in this paragraph.

39. In consideration for such repose and on the terms and conditions contained herein, Chippenham fully and finally releases, dismisses, and forever discharges the United States, its

agencies, employees, servants, and agents, from any and all claims, causes of action, liabilities, losses, appeals of remedies imposed by CMS or HHS-OIG, and damages, including attorneys' fees, costs and expenses, which Chippenham and/or Richmond have asserted or could have asserted against the United States, its agencies, employees, servants, and agents before the effective date of this Settlement Agreement for: (a) any deficiencies cited or found in any surveys or inspections conducted by the Virginia Department of Health at Chippenham from January 1, 1995 to the present and (b) the adequacy of care provided during the period January 1, 1995 to the present on behalf of the nursing home residents identified in the HHS-OIG subpoena dated July 11, 2001. This paragraph shall not be interpreted to prevent Chippenham or Richmond from pursuing amounts due to Chippenham or Richmond as a result of the Medicare or Medicaid cost reporting process.

40. Chippenham and/or Richmond agrees that within ten (10) days of the effective date of this Settlement Agreement, it will notify the Departmental Appeals Board of its intent to withdraw all appeals filed regarding alleged survey deficiencies during the time frame in question, and that the appeals are withdrawn with prejudice and that all requests for hearings are also withdrawn with prejudice.

BANKRUPTCY COORDINATION

41. Chippenham and Richmond agree to coordinate the implementation of this Settlement Agreement with any further proceeding in any bankruptcy court. The Parties explicitly agree that any reorganization plan applicable to Chippenham shall allow and provide the full implementation of this Agreement and shall in no way interfere or impede its full and timely implementation. Chippenham represents that it will amend its presently filed plan of reorganization and will seek confirmation of said plan in accordance with the terms of this agreement. The debtor further agrees that any future proposed plan of reorganization shall

include and be consistent with the terms of this agreement.

42. Immediately upon execution of this agreement, the debtor agrees to move to assume its Medicare Provider Agreement No. 495223 pursuant to 11 U.S.C. § 365. The payments to be made to the United States pursuant to this agreement will be made immediately upon approval of this agreement by the Bankruptcy Court and notwithstanding any failure of the debtor to obtain confirmation of its plan of reorganization. If this case is converted to Chapter 7 or is dismissed at any time prior to or subsequent to confirmation of a plan, debtor will still be obligated to the United States according to the terms in paragraph 1 above. United States will have the right to set off the funds held as described in paragraph 1, or otherwise recoup them.

43. The debtor agrees to seek immediate Court approval of this settlement agreement via a motion pursuant to Fed. R. Bankr Pro. 9019. Chippenham shall seek approval within the earlier of 30 days after filing of the motion or confirmation of the plan of reorganization in this case.

44. Chippenham and/or Richmond agree to develop within 120 days of this Settlement Agreement a contingency plan to address the procedures and specific steps Chippenham and/or Richmond will take to ensure the appropriate placement of all residents in alternative facilities in the event that Chippenham closes and ceases operation as a nursing home.

OTHER PROVISIONS

45. This Settlement Agreement constitutes the complete agreement between the Parties and may not be amended except by the written consent of the Parties.

46. The undersigned individuals signing this Settlement Agreement on behalf of Chippenham and Richmond represent and warrant that they are authorized by Chippenham and/or Richmond to execute this Settlement Agreement. The undersigned United States and Commonwealth of Virginia signatories represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement and to bind their

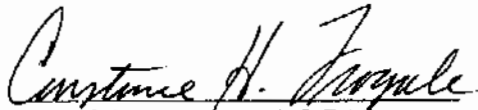
respective sovereigns to the terms and conditions herein.

47. Each party to this Settlement Agreement will bear its own legal and other costs incurred in connection with this matter.

48. This Settlement Agreement is legally binding and judicially enforceable by the Parties and it shall be applicable to and binding upon all of the Parties, their officers, agents, employees, assigns, and successors, including any transferees of Chippenham and Richmond.

49. The effective date of this Settlement Agreement will be the date of the last signatory's signing of a fully executed copy of the Settlement Agreement, and this Agreement may be executed in two or more identical counterparts, each of which shall be deemed an original.

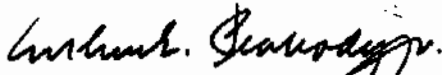
FOR THE UNITED STATES OF AMERICA:



CONSTANCE H. FROGALE
ASSISTANT U.S. ATTORNEY
2100 Jamieson Avenue
Alexandria, VA 22314

Date

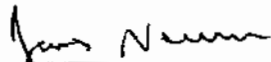
1/11/02



ARTHUR E. PEABODY, JR.
ASSISTANT U.S. ATTORNEY
2100 Jamieson Avenue
Alexandria, VA 22314

Date

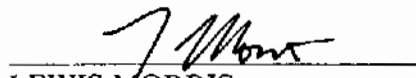
1/11/02



JAMES NEWMAN
CHIEF COUNSEL, REGION III
ON BEHALF OF CMS AND THE
OFFICE OF THE GENERAL COUNSEL
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Date

1/28/02



LEWIS MORRIS
ASSISTANT INSPECTOR GENERAL
OFFICE OF COUNSEL TO THE INSPECTOR GENERAL
DEPARTMENT OF HEALTH AND HUMAN SERVICES

Date

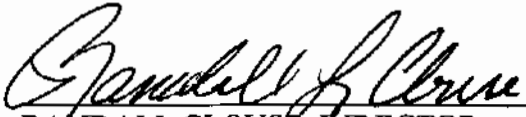
1/14/01

FOR THE COMMONWEALTH OF VIRGINIA:


TRACEY D. STITH


ASSISTANT ATTORNEY GENERAL
OFFICE OF THE VIRGINIA ATTORNEY GENERAL
MEDICAID FRAUD CONTROL UNIT

1/10/02
Date


RANDALL CLOUSE, DIRECTOR

OFFICE OF THE VIRGINIA ATTORNEY GENERAL
MEDICAID FRAUD CONTROL UNIT

2/14/02
Date



ERIC BELL, DIRECTOR
VIRGINIA DEPARTMENT OF MEDICAL
ASSISTANCE SERVICES

1/10/02
Date

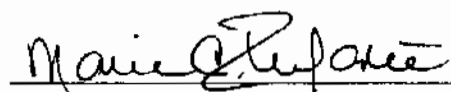

THE HONORABLE MARK R. WARNER
GOVERNOR OF VIRGINIA

2/11/02
Date

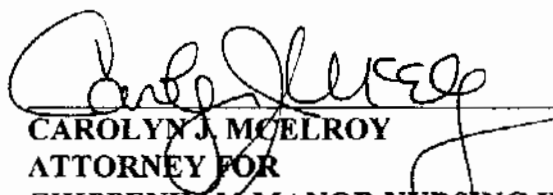
FOR CHIPPENHAM ASSOCIATES, L.P. d/b/a
CHIPPENHAM MANOR NURSING HOME:


ON BEHALF OF
CHIPPENHAM MANOR NURSING HOME
DONALD R. HURDLEY

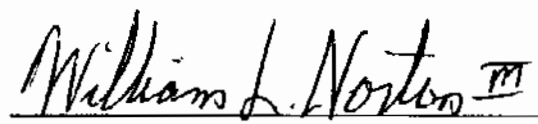
01/08/02
Date


MARIE C. INFANTE
ATTORNEY FOR
CHIPPENHAM MANOR NURSING HOME

01/08/02
Date


CAROLYN J. MCELROY
ATTORNEY FOR
CHIPPENHAM MANOR NURSING HOME

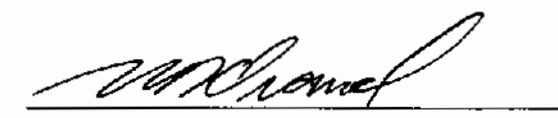
01/08/02
Date


WILLIAM NORTON
BANKRUPTCY ATTORNEY FOR
CHIPPENHAM ASSOCIATES, L.P.
d/b/a CHIPPENHAM MANOR NURSING HOME

1/12/02

Date

FOR RICHMOND MANAGEMENT ASSOCIATES


WILLIAM D. GRAND
ON BEHALF OF
RICHMOND MANAGEMENT ASSOCIATES

1/8/02
Date

EXHIBIT A**

SUBJECT: MEDICAL NUTRITION THERAPY FOR PRESSURE
ULCERS/WOUNDS

STANDARD: Patients/Residents with pressure ulcers/wounds receive nutrition therapy to promote healing.

GUIDELINES:

- The Registered Dietitian is notified by the nursing department via the weekly skin report when a patient/resident develops a pressure ulcer/wound. When a patient/resident is admitted with a pressure ulcer/wound, the Registered Dietitian is notified by the nursing staff.
 - The Registered Dietitian evaluates and documents the patient's/resident's nutritional status at the time he/she is notified of a pressure ulcer/wound and at least weekly until it is healed.
 - Based on the Registered Dietitian's assessment, the nutrient needs of the patient/resident with a pressure ulcer/wound may be increased as follows:
 - a. Protein: Stage I and II: 1.0 - 1.5 Gm/Kg
Stage III and IV: 1.5 - 2.0 Gm/Kg
Multiple pressure ulcers/wounds: 1.5 - 2.0 Gm/Kg
-More protein may be indicated for wounds that are not healing;
monitor lab data and fluid intake.
 - b. Fluid: 35 - 40 cc/Kg/day
- A multivitamin, vitamin C or zinc sulfate *may* be indicated, although long term zinc supplementation should be avoided to prevent copper deficiency and other metabolic derangements.
- The following nutritional interventions for patients/residents with pressure ulcer/wounds are suggested, but not meant to be all inclusive or required, and may be initiated by the Registered Dietitian as deemed appropriate (unless contra-indicated by diagnosis, medical condition or diet order):
 - a. One extra serving of meat, protein or egg at breakfast.
 - b. One extra ounce of meat or protein at lunch and/or dinner.
 - c. 4 oz. of Vitamin C Juice at each meal.
 - d. 8 oz. of milk at each meal.
 - e. Fortified supplement or shake two or three times/day between meals.
 - f. 2,000 + cc of fluid/day encouraged by both nursing and dietary.

- The medical nutrition therapy for these patients/residents is individualized and assessed for acceptance by the patient/resident to ensure effectiveness. If there is an inadequate dietary intake of protein or calories, care givers should first attempt to discover the factors compromising intake and offer support with eating. Other nutritional supplements or support may be needed. If dietary intake remains inadequate and if consistent with overall goals of therapy, more aggressive nutritional intervention such as enteral or parenteral feedings should be considered. (AHCPR Pressure Ulcers in Adults: Prediction and Prevention, Clinical, Practice Guideline Number 3, 7. Nutritional Deficit)
- Pressure ulcer/wound information is communicated to all team members during wound rounds and/or at each interdisciplinary team meeting.
- The Registered Dietitian evaluates the need for continued medical nutrition therapy when the pressure ulcer/wound is healed.

SUBJECT: WEIGHTS - MONITORING OF

- STANDARD:** 1. The Basic Medical patient/resident will be weighed monthly or per physician's order.
- 2. The Subacute patient/resident will be weighed weekly or per physician's order.
 - 3. All residents identified to be a nutritional risk will be weighed weekly.

GUIDELINES:

1. Record weights, equipment ID code and date obtained on the Weight Worksheet.
2. Charge Nurse will chart weights from Weight Worksheet into residents' Medical Records.
3. If the month to month weight shows more than a three percent gain or loss, the patient/resident is reweighed immediately under the supervision of a nurse.
4. The Charge Nurse will notify Dietitian, of weight change > 5% in 30 days, 7.5% in 90 days, or 10% in 180 days using the 3 part Dietary Communication Form. Part I is sent to the Dietitian, part 2 is sent to the Clinical Coordinator and part 3 is placed in the Dietary section of the Medical Record.
5. The Charge Nurse will notify the patient/resident's family, physician and Dietitian if there is an actual five percent (5%) or more gain or loss in one month mid will document weight change and notification in Nurses' Notes.
6. Charge Nurse will complete Action Plan: Significant Weight Changes form for all residents with a > 5% weight change in 30 days or less. Clinical Coordinator will review

these forms weekly and will yellow out entries when completed. Resident names may be re-entered on form if problems recur.

7. The Dietitian reviews the patient's/resident's nutritional status and makes recommendations for intervention in the nutritional progress notes if significant weight change is noted and notifies nursing using the Nutritional Recommendation form. The Dietitian will keep one copy of this form, place a copy in the Dietary Section of the Medical Record, and give another copy to the Clinical Coordinator who will contact physicians for telephone verbal orders as needed. The Clinical Coordinator will document follow-up on the Nutritional Recommendation form and return it to the Dietician. Once recommendations have been implemented, the Dietitian will yellow out the recommendation.
8. Significant, unplanned changes in weights are reviewed weekly at the Weight Committee Meeting following Weight Committee Standards of Practice.

SUBJECT: **WEIGHT COMMITTEE**

STANDARD: Patients/Residents with identified significant weight changes, gradual weight variance trends, and residents identified at risk for weight gain/loss will be reviewed at the Weight Committee meeting to help maintain acceptable parameters of nutritional status.

GUIDELINES:

1. The Weight Committee meets weekly to review patients/residents identified to be at nutritional risk due to :
 - *Weight change > 5% in 30 days
 - *Weight change >7.5% in 90 days
 - *Weight change >10% in 190 days
 - *New diagnosis of depression
 - *Consumes < 75% of 1-2 meals/day for 3 consecutive days
 - *Tube feeding
 - *Pressure ulcers
 - *Abnormal albumin according to below parameters in number 4.
2. The Weight Committee includes the following members: Dietitian, Clinical Coordinator, Director of Rehab Services, RNAC, and DON.
3. Identified patients/residents are reviewed by the Committee to determine the reason for weight variance and plan interventions to prevent further weight change and improve weight status. Information on those patients/residents is noted on the Action Plan, Significant Weight Changes form.
4. Action parameters are as follows:

- a. Albumin level to be obtained monthly on all residents with pressure ulcers or tube feeding.
 - b. Albumin levels will be done on Admission on all residents with a pressure ulcer score of 9 or above on the Pressure Sore Risk, Assessment, a score of 16 or less on the Braden Scale, or a history of weight loss.
 - c. Albumin level will be done on admission and quarterly x 2 if resident has had an albumin level of < 3.5 within the last 3 months. If no weight loss after 6 mos. albumin annually.
 - d. Albumins will be completed every 6 mos., on residents who continue to score > 9 on the Pressure Sore Risk assessment or < 16 on the Braden Scale.
 - e. Albumins will be completed quarterly x 2 on any resident with a history of pressure sores, or past history of significant weight loss. If no weight loss or skin breakdown is noted after 6 months, albumin will be discontinued annually thereafter.
 - f. Prealbumin may be useful to monitor protein stores in patients/residents with pressure ulcers. The Dietitian will request an order for prealbumin when a resident has a Stage 3 or 4 pressure ulcer. Prealbumin will be rechecked weekly until the lab results and/or other clinical indicators, such as wound healing, indicate positive nitrogen balance. If the request for prealbumin levels is denied, the physician will be asked to document that the patient/resident is in positive nitrogen balance.
 - g. Residents found "at risk" by the Weight Committee who exhibit any of the following will have an albumin level checked:
 - * Abnormal hemoglobin and hematocrit in the past month
 - * Variable oral intake in the past month
 - * Poor dentition
 - * Weight loss > 5% in the past month
 - * New psychiatric diagnosis or exacerbation of an existing psychiatric condition.
5. Residents found to be at risk will have the following:
- a. Albumin order
 - b. Weekly weights
 - c. Care Plan update
 - d. Evaluation by Dietitian within 3-4 days of "risk determination" to include:
 - * Assessment of nutritional/hydration status
 - * Albumin evaluation
 - * Update caloric, fluid and protein needs

*Determination of ideal body weight

*Dietician's progress note to include the above as well as prior weights, pertinent labs and interventions,

e. Monthly assessment by the Dietitian.

6. A new Minimum Data Set is triggered due to significant, unplanned weight change as follows:

5% in 30 days, 7.5% in 90 days, or 10% in 180 days.

7. The Dietitian will update the Plan of Care to reflect weight changes with appropriate goals and approaches/interventions listed.

**** Guidelines developed by Bruce Kinoshian, MD, and Becky Berlin, CRNP.**

WDC 305227v2

WDC 305971v1